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NEW YORK NY 10112

In re Application of	:	DECISION
LI et al.	:	
Application No.: 10/599,449	:	
Attorney Docket No.: 18104.002US1	:	
For: A QUANTIFIED SYSTEM TO DESIGN,	:	
PLAN AND MANAGE ORGANIZATIONS'	:	
SALES ACTIVITIES	:	

This decision is in response to applicants' submission filed in the United States Patent and Trademark Office (USPTO) on 23 October 2010, which included a "RESPONSE TO NOTIFICATION OF DEFECTIVE RESPONSE" that has properly been treated as a petition under 37 CFR 1.181 and a petition under 37 CFR 1.137(b).

BACKGROUND

On 29 March 2005, applicants filed international application PCT/CN2005/000400 which claimed a priority date of 29 March 2004 and designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 06 October 2005. The thirty-month period for paying the basic national fee in the United States expired at midnight on 29 September 2006.

On 28 September 2006, applicants filed application papers in the United States Patent and Trademark Office electronically via EFS-Web. The submission included, *inter alia*, an abstract, specification, drawings, and claims. The specification identifies the application as a "continuation in part of prior PCT Application No. PCT/CN2005/000400, filed March 29, 2005". However, when filing the application electronically, applicant selected in the Graphical User Interface the radio button "U.S. National Stage under 35 USC 371" rather than the radio button "Utility". (See Electronic Acknowledgement Receipt for the instant application dated 28 September 2006.)

On 15 April 2008, a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) was mailed indicating, *inter alia*, that a declaration of inventors in compliance with 37 CFR 1.497(a)-(b) was required.

On 09 July 2008, applicants filed a declaration of inventors.

On 14 July 2008, a NOTIFICATION OF DEFECTIVE RESPONSE (Form PCT/DO/EO/916) was mailed indicating, *inter alia*, that the declaration of inventors filed 09 July 2008 was not in compliance with 37 CFR 1.497(a)-(b) because the declaration listed three inventors while the published international application listed only two inventors.

On 20 August 2009, a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) was mailed indicating that the application was abandoned as to the United States of America for failure to respond to the Notification mailed 14 July 2008.

On 23 August 2010, applicants filed the instant petitions under 37 CFR 1.181 and 37 CFR 1.137(b).

DISCUSSION

Petition Under 37 CFR 1.181

The petition under 37 CFR 1.181 indicates that the declaration of inventors filed 09 July 2008 was sufficient because the instant application is a continuation-in-part of PCT/CN2005/000400 and that the third inventor listed in the declaration contributed to the continuation-in-part application.

Conflicting Instructions

Any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 35 U.S.C. 371(c). The official PTO Notice published in the Official Gazette at 1077 OG 13 entitled "Minimum Requirements for Acceptance of Applications Under 35 U.S.C. 371 (the National Stage of PCT)" states, in part, the following:

The Patent and Trademark Office is continuing to receive application papers which do not clearly identify whether the papers (1) are being submitted to enter the national stage of the Patent Cooperation Treaty (PCT) under 35 U.S.C. 371 or (2) are being filed as a regular national application under 35 U.S.C. 111.

* * *

If there are any conflicting instructions as to which sections of the statute (371 or 111) is intended the application will be accepted under 35 U.S.C. 111.

See also 37 CFR 1.495(g). As noted above, applicant selected the radio button "U.S. National Stage under 35 USC 371" rather than the radio button "Utility" when filing electronically via EFS-Web. However, the specification filed on that date identified the application as a "continuation in part of prior PCT Application No. PCT/CN2005/000400, filed March 29, 2005". So the originally filed papers included conflicting instructions. Thus, the papers should have been considered as having been filed under 35 U.S.C. 111(a). Accordingly,

the original papers deposited on 28 September 2006 were improperly accepted as a submission under 35 U.S.C. 371. The NOTIFICATION OF MISSING REQUIREMENTS mailed 15 April 2008, the NOTIFICATION OF DEFECTIVE RESPONSE mailed 14 July 2008, and the NOTIFICATION OF ABANDONMENT mailed 20 August 2009 are each hereby VACATED.

Petition Under 37 CFR 1.137(b)

The petition under 37 CFR 1.137(b) is moot for the reasons set forth above. The petition fee has been credited to Deposit Account 03-1240.

CONCLUSION

This application is accepted as an application filed under 35 U.S.C. 111(a).

For the reasons set forth above, the petition under 37 CFR 1.181 is GRANTED.

For the reasons set forth above, the petition under 37 CFR 1.137(b) is DISMISSED as MOOT.

The NOTIFICATION OF MISSING REQUIREMENTS mailed 15 April 2008, the NOTIFICATION OF DEFECTIVE RESPONSE mailed 14 July 2008, and the NOTIFICATION OF ABANDONMENT mailed 20 August 2009 are each VACATED.

The application will be forwarded to the Office of Initial Patent Examination for processing as an application filed under 35 U.S.C. 111(a) having application number **10/599,449** and having a filing date of 28 September 2006.

/Daniel Stemmer/

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